

**CALIFORNIA COASTAL COMMISSION**

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# TH 6A

December 16, 2004

**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR**  
**SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO AREA**  
**OFFICE**  
**BILL PONDER, COASTAL PROGRAM ANALYST AREA OFFICE**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR**  
**AMENDMENT NO. 2-04A (Agricultural Mitigation Fee) for**  
**Commission Meeting of January 12-14, 2005)**

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## SYNOPSIS

The proposed LCP amendment was filed complete on August 12, 2004 and includes two separate components involving changes to both the certified LCP land use plan and the implementation plan. A one year time extension has been granted and the last day for Commission action on LCPA #2-04A is November 12, 2005. LCPA #2-04B (Black Rail) has already been approved by the Commission to revise the zoning designation of a 4.4-acre site located on the southwest corner of Black Rail Rd and Poinsettia Lane.

## SUMMARY OF AMENDMENT REQUEST

The amendment proposes both land use and implementation plan changes to the Agricultural Mitigation Fee Program of the certified Carlsbad Local Coastal Program (LCP). The Agricultural Mitigation Fee Program is implemented through the Coastal Agriculture Overlay Zone which designates certain properties within the Coastal Zone as subject to a mitigation fee if the agricultural land is converted to urban uses.

Amendments to the Carlsbad LCP certified by the Commission in 1985 essentially allow all of the agriculturally designated lands within the City's Mello I and II segments to be converted to urban uses pursuant to either (1) a determination of infeasibility of continued agricultural use based on area-wide studies, (2) participation in a mitigation program designed to offset the loss of agricultural lands, or (3) payment of an agricultural mitigation fee. In almost all cases applicants have chosen option 3 as the preferred alternative.

The Agricultural Mitigation Fee Program in the City of Carlsbad consists of two components: (1) a Statutory Program based on Section 30171.5 of the Coastal Act, which identifies a priority-based list of allowed fund uses and provides for 50% of the funds to

be expended for Batiquitos Lagoon. The Statutory Program has not been incorporated into the certified LCP; and (2) a Local Coastal Program (“LCP”) fund that, while similar to the Statutory Program, is not governed by Section 30171.5 of the Coastal Act. As a result, the LCP fund has different allowable uses and promotes the concept of prolonging agricultural uses in the City while recognizing them as transitional land uses. Also, the LCP fund does not contain the 50% provision for Batiquitos Lagoon like the Statutory Program does. Currently both funds designate the State Coastal Conservancy (SCC) as the program administrator for their respective programs.

The amendment proposal currently before the Commission proposes to designate the City as the administrator of the LCP fund. The City has been managing the account, which contains approximately \$6 million and has the potential for up to \$9 million if all designated agricultural lands are developed; SCC would remain the administrator of the Statutory Program, which contains approximately \$1.7 million.

The proposed language would amend the Mello II segment Land Use Plan and eliminate the current prioritization of uses for the LCP fund; revise, update and expand the list of acceptable fund uses; add a requirement for an advisory committee that would follow City Council approved guidelines to ensure equitable distribution of funds and stakeholder participation; delete references to Batiquitos Lagoon as the only lagoon to receive funds for restoration; and delete references to the Buena Vista Lagoon Interpretive Center as the only center to receive funds from the program.

### **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending denial of the proposed LCP amendment as submitted and approval with suggested modifications. Staff recommends the Commission find the majority of the proposed revisions to the City’s agriculture mitigation fee program, which will be applicable to lands in the Mello II segment, to be consistent with the Commission’s intent in approving the program. The revisions to potential uses of the funds will result in the funds being spent on the same type of resources given priority under the Coastal Act as the current certified program would allow. However, staff recommends the Commission clarify that maintenance, parking and roadways are not acceptable uses for program because the funds are meant as mitigation and to result in restoration of resources. In addition, staff recommends the State Coastal Conservancy continue to have a presence with a seat on the advisory committee. The staff also recommends language to clarify there are two separate agricultural mitigation fee programs in Carlsbad.

The appropriate resolutions and motions begin on page 4. The suggested modifications begin on page 6. The findings for denial of the Land Use Plan Amendment as submitted begin on page 9. The findings for approval of the plan, if modified, begin on page 17. The findings for denial of the Implementation Plan Amendment as submitted begin on page 18. The findings for approval of the plan, if modified, begin on page 20.

### **ADDITIONAL INFORMATION**

Further information on the submittal may be obtained from **Bill Ponder** at the San Diego

Area Office of the Coastal Commission at 7575 Metropolitan Drive, Suite 103,  
San Diego, CA 92108-4402, (619) 767-2370.

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## **PART I. OVERVIEW**

### **A. LCP HISTORY**

#### **Carlsbad Local Coastal Program (LCP)**

The City's certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties and Village Redevelopment. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The West Batiquitos Lagoon/ Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all remaining segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment remains as a deferred certification area until an implementation plan is certified. The subject amendment request affects the Mello II LUP and certified zoning ordinance segments of the certified LCP.

### **B. STANDARD OF REVIEW**

The standard of review for land use plans, or their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it finds that it meets the requirements of and conforms with Chapter 3 of the Coastal Act. Specifically, it states:

#### **Section 30512**

(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

In those cases when a local government approves implementing ordinances (or changes to implementing ordinances) in association with a land use plan amendment and both are submitted to the Commission for certification as part of one LCP amendment, pursuant to Section 13542(c) of the Commission's regulations, the standard of review for the implementing actions shall be the land use plan most recently certified by the Commission. Thus, if the land use plan is conditionally certified subject to local government acceptance of the suggested modifications, the standard of review for the implementing ordinances shall be the conditionally certified land use plan.

### **C. PUBLIC PARTICIPATION**

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

## **PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS**

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. MOTION:**     *I move that the Commission certify the Land Use Plan Amendment #2-04A for the Mello II segment of the certified City of Carlsbad LCP as submitted.*

### **STAFF RECOMMENDATION OF DENIAL OF CERTIFICATION:**

Staff recommends a **NO** vote on the motion. Failure of this motion will result in denial of the land use plan amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

### **RESOLUTION TO DENY CERTIFICATION OF LAND USE PLAN AMENDMENT AS SUBMITTED:**

The Commission hereby denies certification of the Land Use Plan Amendment for the Mello II segment of the certified Carlsbad LCP as submitted and finds for the reasons discussed below that the submitted Land Use Plan Amendment fails to meet the requirements of and does not conform to the policies of Chapter 3 of the California Coastal Act. Certification of the plan would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures that would substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

- II. MOTION:**     *I move that the Commission certify the Land Use Plan Amendment #2-04A for the Mello II segment of the certified City*

*of Carlsbad LCP if modified in accordance with the suggested changes set forth in the staff report.*

**STAFF RECOMMENDATION: CERTIFICATION IF MODIFIED AS SUGGESTED:**

Staff recommends a **YES** vote on the motion. Passage of the motion will result in certification with suggested modifications of the submitted land use plan amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

**RESOLUTION TO CERTIFY SUBMITTED LAND USE PLAN AMENDMENT IF MODIFIED AS SUGGESTED:**

The Commission hereby certifies the Land Use Plan Amendment for the Mello II segment of the certified Carlsbad LCP if modified as suggested and adopts the findings set forth below on the grounds that, if modified as suggested below, the submitted Land Use Plan Amendment will meet the requirements of and conform to the policies of Chapter 3 of the California Coastal Act. Certification of the plan if modified as suggested below complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

**III. MOTION:**     *I move that the Commission reject the Implementation Program Amendment #2-04A for the Mello II segment of the certified City of Carlsbad LCP as submitted.*

**STAFF RECOMMENDATION OF REJECTION:**

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:**

The Commission hereby denies certification of the Implementation Program Amendment submitted for the Mello II segment of the certified City of Carlsbad LCP and adopts the findings set forth below on grounds that the Implementation Program Amendment as submitted does not conform with and is inadequate to carry out the provisions of the conditionally certified land use plan. Certification of the Implementation Program Amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially

lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment as submitted

**IV. MOTION:**     *I move that the Commission certify the Implementation Program Amendment #2-04A for the Mello II segment of the certified City of Carlsbad LCP if it is modified as suggested in this staff report.*

**STAFF RECOMMENDATION:**

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the Implementation Program Amendment for the Mello II segment of the certified City of Carlsbad LCP if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment with the suggested modifications will conform with and be adequate to carry out the provisions of the certified land use plan. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

**PART III. SUGGESTED MODIFICATIONS**

City proposed changes are shown in non-bolded strike-out and bolded new language; Commission suggested changes are shown in bolded strike-out, and underlined new language.

1) City proposed subsections (b) related to agricultural improvements and (d) related to lagoon nature centers should be relocated to existing subsections (d) and (b) respectively, to correspond to the existing LCP language related to those uses, as shown in the following revised versions of Option 3 of Policy 2-1 and Section 21.202.060.

2) Land Use Plan

Option 3 – Agricultural Conversion Mitigation Fee

In lieu of the procedures established by subsection B or subsection C of this section, property may be converted to urban uses upon payment of an agricultural conversion mitigation fee.

This fee is separate and distinct from the mitigation fee established by Section 30171.5 of the Public Resources Code, which applies to certain properties outside the Mello I and Mello II segments of the City's local coastal program, is collected and administered by the State Coastal Conservancy and has different expenditure priorities.

The amount of the fee shall be determined by the City Council at the time it considers a Coastal Development permit for urban development of the property. The fee shall not be less than \$5,000 nor more than \$10,000 per net converted acre of agricultural land and shall reflect the approximate cost of preserving prime agricultural land pursuant to the off-site mitigation program (Option 1). The fees shall be paid prior to the issuance of building permits for the project. All mitigation fees collected under this section shall be deposited in the ~~State Coastal Conservancy~~ **City of Carlsbad LCP Agricultural Mitigation Fees** Fund and shall be expended by the ~~State Coastal Conservancy~~ **City of Carlsbad** in the following order of priority **subject to the recommendations of an advisory committee to be established by City Council action. The advisory committee shall have city and Coastal Conservancy staff, and community representation. The intent is not to establish priorities for Fund use, but rather to promote equitable distribution amongst the allowable uses outlined below. The advisory committee may also develop policies or procedures for the review of requests and the allocation of funds. The allowable uses for the Agricultural Mitigation Fees are:**

- a) ~~Restoration of natural resources and wildlife habitat in Batiquitos Lagoon~~ **Restoration of the Coastal and lagoon environment including but not limited to acquisition, maintenance, management and/or restoration involving wildlife habitat or open space preservation.**
- b) ~~Development of an interpretive center at Buena Vista Lagoon.~~ **Improvements to existing or proposed lagoon nature centers.**
- c) ~~Restoration of beaches managed for public use in the coastal zone in the City of Carlsbad~~ **Restoration and maintenance of beaches for public use including but not limited to: local and regional sand replenishment programs, vertical and lateral beach access improvements, trails, roadways and other beach-related improvements that enhance accessibility, parking and/or public use of beaches.**
- d) ~~Purchase of agricultural lands for continued agricultural production within the Carlsbad Coastal Zone as determined by the Carlsbad City Council.~~

- e) ~~Agricultural improvements which will aid in continuation of agricultural production within the Carlsbad Coastal Zone as determined by the Carlsbad City Council.~~
- d) **Purchase, and improvement ~~and/or maintenance~~ of agricultural lands for continued agricultural production, or for the provision of research activities or ancillary uses necessary for the continued production of agriculture in the City's Coastal Zone, including but not limited to farm worker housing.**

### 3) Implementation Plan

21.202.060 D. Agricultural Conversion Mitigation Fee. In lieu of the procedures established by subsection B or subsection C of this section, property may be converted to urban uses upon payment of an agricultural conversion mitigation fee.

This fee is separate and distinct from the mitigation fee established by Section 30171.5 of the Public Resources Code, which applies to certain properties outside the Mello I and Mello II segments of the City's local coastal program, is collected and administered by the State Coastal Conservancy and has different expenditure priorities.

The amount of the fee shall be determined by the City Council at the time it considers a Coastal Development permit for urban development of the property. The fee shall not be less than five thousand dollars nor more than ten thousand dollars per net converted acre of agricultural land and shall reflect the approximate cost of preserving prime agricultural land pursuant to subsection B of this section. The fees shall be paid prior to the issuance of building permits for the project. All mitigation fees collected under this section shall be deposited in the ~~State Coastal Conservancy~~ **City of Carlsbad LCP Agricultural Mitigation Fees** Fund and shall be expended by the ~~State Coastal Conservancy~~ **City of Carlsbad** in the following order of priority **subject to the recommendations of an advisory committee to be established by City Council action. The advisory committee shall have city and Coastal Conservancy staff and community representation. The intent is not to establish priorities for Program use, but rather to promote equitable distribution amongst the allowable uses outlined below. The advisory committee may also develop policies or procedures for the review of requests and the allocation of funds. The allowable uses for the Agricultural Mitigation Fees are:**

1. ~~Restoration of natural resources and wildlife habitat in Batiquitos Lagoon including but not limited to, continued funding of any maintenance, operation or enhancement costs necessary to implement any lagoon enhancement program approved by the city council.~~ **Restoration of the Coastal and lagoon environment including but not limited to acquisition, maintenance, management and/or restoration involving wildlife habitat or open space preservation.**



2. ~~Development of an interpretive center at Buena Vista Lagoon.~~ **Improvements to existing or proposed lagoon nature centers.**
3. ~~Restoration of beaches managed for public use in the coastal zone in the City of Carlsbad~~ **Restoration and maintenance of beaches for public use including but not limited to: local and regional sand replenishment programs, vertical and lateral beach access improvements, trails, roadways and other beach-related improvements that enhance accessibility, parking and/or public use of beaches.**
4. ~~Any other project or activity benefiting natural or agricultural resources in the coastal zone in the city that is provided for in the certified local coastal program.~~ **Purchase, and improvement and/or maintenance of agricultural lands for continued agricultural production, or for the provision of research activities or ancillary uses necessary for the continued production of agriculture in the City's Coastal Zone, including but not limited to farm worker housing.**

#### **PART IV. FINDINGS FOR DENIAL OF CERTIFICATION OF THE CITY OF CARLSBAD LAND USE PLAN AMENDMENT, AS SUBMITTED**

##### **A. AMENDMENT DESCRIPTION/HISTORY**

The Carlsbad Agricultural Mitigation Fee Program consists of two components: (1) a Statutory Program (pursuant to Section 30107.5 of the Coastal Act), which identifies a priority-based list of allowed fund uses based primarily on resource protection and improving public access; and (2) a Local Coastal Program fund with similar fund uses but promotes prolonging agricultural uses while recognizing them as transitional land uses and does not specifically address public access. The proposed amendment would only change the policies in the Mello II Land Use Plan segment (LUP) addressing the LCP fund; no changes are proposed to the Statutory Program.

The proposed language would amend the Mello II segment Land Use Plan and eliminate the current prioritization of uses for the LCP fund; revise, update and expand the list of acceptable fund uses; add a requirement for an advisory committee that would follow City Council approved guidelines to ensure equitable distribution of funds and stakeholder participation; delete references to Batiquitos Lagoon as the only lagoon to receive funds for restoration; and delete references to the Buena Vista Lagoon Interpretive Center as the only center to receive funds from the program.

Specifically, the amendment provides that the fee is collected by the City (previously Coastal Conservancy); allows fee funding for improvements to the coastal and lagoon environment and to existing or proposed lagoon nature centers; revises the general requirement for restoration of beaches for public use in Carlsbad by clarifying that fees may be spent on vertical and lateral beach access improvements, trails, roadways and other beach-related improvements that enhance accessibility, parking and/or use; and revises the general requirement to use fees for purchasing agricultural lands and

agricultural improvements by clarifying that purchase, improvement and/or maintenance of agricultural lands for continued agricultural production, or for the provision of research activities or ancillary uses necessary for the continued production of agriculture and/or aquaculture in the city's coastal zone including, but not limited to, farm worker housing is permitted.

**B. NONCONFORMITY OF THE CITY OF CARLSBAD LAND USE PLAN  
AMENDMENT WITH CHAPTER 3**

**1. Agriculture/LCP History.**

Sections 30241 and 30242 of the Coastal Act state:

Section 30241.

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.

(b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

(c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.

(d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.

(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.

(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

Section 30242.

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

In accordance with Section 30242 of the Coastal Act, the Commission originally adopted an agricultural preservation program for Carlsbad when the Mello I and Mello II LCP segments were approved in 1980 and 1981. This program, referred to as the Agricultural Subsidy Program, was developed to preserve, protect and encourage agricultural operations in Carlsbad on a long-term basis pursuant to the Coastal Act. The Agricultural Subsidy Program was an attempt to establish, to the extent feasible, stable urban/agricultural boundaries. With the construction of Interstate-5, and with the Palomar Airport Road and El Camino Real being major transportation corridors, a chain of development expectations was created which had adversely affected coastal agriculture. The Agricultural Subsidy Program was designed to concentrate urban development along these corridors and preserve agricultural lands removed from these corridors in an area where the urban infrastructure had not yet been developed, and where to a large extent topographic features buffered the agricultural lands from existing or proposed urban development.

Under the Agricultural Subsidy Program, certain lands, due to their proximity to those existing urban uses and available facilities were designated as “Potentially Developable” under a Planned Agricultural zone (P-A zone) which was an overlay for designated properties. Conversion of these lands would be permitted subject to payment of a mitigation fee. The majority of the mitigation fee would be used to subsidize agriculture on other lands within the P-A zone, which because of their lack of public services and lack of conflicts with urban development were designated for continued agricultural production. The program was voluntary. Owners of potentially developable lands could elect to pay the mitigation fee (\$24,000 an acre adjusted to the consumer price index) and be permitted to convert the lands; and the owners of subsidized lands could opt to receive subsidy funds if they agreed to record an easement over such property limiting its use to agricultural operations. The program also provided that a portion of the mitigation fees be used for establishment of a General Agricultural Fund to develop projects in Carlsbad, which would promote long-term agriculture.

In 1984, Assembly Bill 3744 (Bradley) was signed into law as Public Resource Code 30171.2. The bill deleted the provisions of the Agricultural Subsidy Program from portions of the certified LCP addressed in Section 30171 (Mello II LCP segment). The bill also added Public Resource Code Section 30171.5 to establish the parameters of a mitigation fee program for development of non-prime agricultural lands located outside Mello I and Mello II segments, which has become the Statutory Program administered by the California Coastal Conservancy. The LCP has not been amended to incorporate an agricultural mitigation fee program addressing lands outside Mello I and II segments. The purpose of the Statutory Program was to provide mitigation for the urban conversion of designated properties located in Carlsbad in the certified East Batiquitos Lagoon and West Batiquitos Lagoon LCP segments. The legislation also required that the fees be

spent to benefit coastal resources and coastal access in Carlsbad in an established order of priority. Section 30171.5 was subsequently amended in 1987 (AB 1291) and 1996 (AB 2659) and currently reads as follows:

Section 30171.5.

(a) The amount of the mitigation fee for development on nonprime agricultural lands in the coastal zone in the City of Carlsbad that lie outside of the areas described in subdivision (f) of Section 30170 and subdivision (b) of Section 30171 shall be determined in the applicable segment of the local coastal program of the City of Carlsbad, but shall not be less than five thousand dollars (\$5,000), nor more than ten thousand dollars (\$10,000), per acre. All mitigation fees collected under this section shall be deposited in the State Coastal Conservancy Fund.

(b) All mitigation fees collected pursuant to this section are hereby appropriated to, and shall be expended by, the State Coastal Conservancy in the following order of priority:

(1) Restoration of natural resources and wildlife habitat in Batiquitos Lagoon.

(2) Development of an interpretive center at Buena Vista Lagoon.

(3) Provision of access to public beaches in the City of Carlsbad.

(4) Any other project or activity benefiting or enhancing the use of natural resources, including open field cultivated floriculture, in the coastal zone in the City of Carlsbad that is provided for in the local coastal program of the City of Carlsbad.

(c) The State Coastal Conservancy may establish a special account in the State Coastal Conservancy Fund and deposit mitigation fees collected pursuant to this section in the special account. Any interest accruing on that money in the special account shall be expended pursuant to subdivision (b).

(d) Not less than 50 percent of collected and bonded mitigation fees shall be expended for the purpose specified in paragraph (1) of subdivision (b).

(e) Other than to mitigate the agricultural conversion impacts for which they are collected, none of the mitigation fees collected pursuant to this section shall be used for elements of a project which cause that project to be in compliance with this division or to mitigate a project which would otherwise be inconsistent with this division. When reviewing a potential project for consistency with this subdivision, the State Coastal Conservancy shall consult with the commission.

In 1985, the City amended the Mello I and II LCP segments to eliminate the Agricultural Subsidy Program pursuant to the Bradley bill and to establish alternative mitigation options for urban conversion of designated agricultural properties located within the Mello I and Mello II LCP segments. These mitigation options were codified in Policy 2-

1 of the Mello II LUP (the Mello I LUP covered only a few large properties, which have been developed). Section 30171.5, and the legislative intent behind it, served as models for Policy 2-1, which addresses both agricultural preservation and conversion of lands within the Mello II LUP segment. In 1985, the Commission found :

“While the areas defined in the legislation do not correspond to the Mello I and II plan areas, the Commission finds that the intent of the legislation is to provide an alternative agricultural preservation policy which will allow for preservation of agricultural lands in Carlsbad and restoration and enhancement of other coastal resources within the City. Under the program, some of the potential mitigation would not be directly related to the resources which will suffer the impacts when agricultural lands are converted. The Commission finds, however, that the policy is protective of Carlsbad’s natural coastal resources given priority under the Coastal Act, including the sensitive wetlands of Batiquitos Lagoon and Buena Vista Lagoon, and that the imposition of a mitigation fee for the conversion of agricultural lands does not present a conflict with the other aspect of the amending legislation (AB3744) which deleted the Agricultural Subsidy Program from the Carlsbad LCP Mello I and II segments”.

The Commission explained that legislative intent and the guiding principles for its review of the proposed revised program as a mandate for restoration and enhancement of natural coastal resources and support of agriculture. Since 1985, this has been the standard the Commission has used in reviewing any proposed modification to the LCP Fund/Program.

Policy 2-1 allows conversion of almost all the agriculturally designated lands within the City's Mello II segment. The LCP provides three mitigation options for such conversions: (1) "Prime Land Exchange"; (2) "Determination of Agricultural Feasibility"; and (3) "Agricultural Conversion Mitigation Fee".

The first option is a determination of infeasibility of continued agricultural use based on area-wide, rather than site-specific studies of agricultural feasibility. The second option is participation in a mitigation program designed to preserve off-site prime agricultural lands elsewhere in the coastal zone. The third option for conversion is the payment of an agricultural mitigation fee of between \$5,000 and \$10,000 per acre of converted lands. The overlay provides that the fee is to be determined by the City of Carlsbad. Under this option, the mitigation requirement is to be paid prior to the issuance of building permits for the project. Policy 2-1, as certified by the Commission, prioritizes use of the fund as follows:

- a) Restoration of natural resources and wildlife habitat in Batiquitos Lagoon.
- b) Development of an interpretive center at Buena Vista Lagoon.
- c) Restoration of beaches managed for public use in the coastal zone in the City of Carlsbad.
- d) Purchase of agricultural lands for continued agricultural production within the Carlsbad Coastal Zone as determined by the Carlsbad City Council.

- e) Agricultural improvements which will aid in continuation of agricultural production within the Carlsbad Coastal Zone as determined by the Carlsbad City Council.

This LCP mitigation program is similar to the one established by Section 30171.5 of the Coastal Act in terms of the fee amount and the funding priorities but with several differences that will be explained in greater detail later in this report.

In 1999, although still designated as the administrator of both funds, at the request of the City, the SCC transferred LCP fund monies into what has become the City LCP account. The City assumed fund administrator duties even though its performance of these functions had not been endorsed by the Commission through an LCP amendment.

As noted, the proposed LCP amendment would revise Policy 2-1 of the certified Mello II LUP and Section 21.202 of the Coastal Agricultural Overlay Zone ordinance to designate the City as the administrator of the LCP fund, remove the priority requirement for funding and clarify, update and expand the list of fund uses.

The proposed amendment does not clarify that the mitigation fee program included within the City's LCP is separate and distinct from the mitigation fee program established by Section 30171.5 of the Coastal Act, which has led to some confusion as to the appropriate use of the funds. Both recognize resource preservation as a long-term use to offset the impacts of development of agricultural lands on designated properties, however, the program pursuant to Section 30171.5 of the Act applies to the certified East Batiquitos Lagoon and West Batiquitos Lagoon LCP segments. This program is administered by the State Coastal Conservancy and has different expenditure priorities than the LCP program. Section 30171.5 requires that 50% of collected fees be spent on restoration of natural resources and wildlife habitat in Batiquitos Lagoon. This is appropriate due to the proximity of the lands addressed by the Statutory Program to Batiquitos Lagoon to assure the impacts associated with both urban development and past agricultural operations be addressed through the mitigation fee.

The LCP fund covers the agriculturally designated properties in the Mello I and Mello II segments.

#### Restoration of Lagoons/Open Space

The proposed amendment would amend Option 3 of Policy 2-1 in the Mello II LUP segment. The proposed change to the first priority for use of the funds, i.e. restoration of natural resources and wildlife habitat in Batiquitos Lagoon, would expand that use to include acquisition, maintenance, management and/or restoration involving wildlife habitat or open space preservation in all areas. As proposed by the City, this use would no longer be a first priority; however, it would receive sufficient funds to support an equal distribution of the monies toward restoration of lagoon and coastal resources and acquisition of open space, taking into consideration the monies that have been spent on the other four categories for use of the funds.

The Commission finds the types of uses identified could help implement the certified Habitat Management Plan and secure and manage preserved lands in the coastal zone as open space habitat consistent with the resource protection policies of the Coastal Act. Therefore, broadening use of the funds beyond restoration of resources in Batiquitos Lagoon is acceptable and preferable, particularly with the Statutory Program prioritizing resource protection in Batiquitos Lagoon. In addition, the Commission favors language that would not limit use of the funds to only those mentioned, provided the use will result in restoration of the coastal and lagoon environment through wildlife habitat and open space preservation. By adding language such as “including but not limited to” the policy language would not limit the potential to use the funds for a legitimate purpose not anticipated at this time.

Further, the Commission does not support including maintenance in the list of allowable uses of the fund meant for restoration activities. The term maintenance can be interpreted to support only the status quo, and this fund is clearly meant to go beyond that type of activity to restoration of resources. Again, the standard applied to proposed changes to this program is that they must promote restoration and enhancement of natural coastal resources. Maintenance is also not an appropriate mitigation for impacts of development to natural resources. Therefore, the Commission finds some revisions to the proposed uses are necessary in order to find the amendment consistent with the statutory mandate to mitigate the impact to natural resources resulting from development of property which has historically been farmed, through restoration of resources where they will be protected in perpetuity as habitat and open space.

#### Lagoon Nature Centers

The second proposed change to Policy 2-1 would expand use of the funds for improvements to existing and proposed nature centers. The current language targets development of an interpretive center at Buena Vista Lagoon; however, this center has now been built. The City has or contemplates a nature/interpretative center at Batiquitos, Agua Hedionda and Buena Vista Lagoons, and the Commission finds use of the funds to benefit any one of these centers is acceptable and consistent with the intent of the statute.

#### Restoration of Beaches/Public Access

Thirdly, the City proposes to expand restoration of beaches managed for public use in the coastal zone to include maintenance, local and regional sand replenishment programs, vertical and lateral beach access improvements, trails, roadways and other access related improvements including parking. The Commission finds expanding beach restoration to uses that improve the general accessibility of beaches to the public is acceptable and consistent with the original Commission action which allows the funds to be used for resources prioritized under the Coastal Act, including beaches managed for public use. However, the Commission cannot find use of the fees on roadways and parking acceptable as it is too broad and not directly related to the restoration of natural resources or public access to the shoreline. Similarly, maintenance of beaches is not an appropriate use of funds meant to mitigate impacts of development and restore coastal resources. Use of these funds is meant for types of activities not typically provided for in other

accounts or budgets. Therefore, the Commission cannot support all the uses proposed by the City in this category as consistent with the idea of restoration and enhancement of coastal resources given priority under the Coastal Act.

#### Long-term Agricultural Use

Finally, the City proposes to modify one of the allowable uses of the fund, which is currently described as being for purchase of agricultural lands and improvements to aid in continuation of agricultural production, to include maintenance, research activities or ancillary uses necessary for continued agricultural production, including but not limited to farmworker housing. The certified LCP fund currently allows use of the funds to encourage continued agricultural production; this is a primary difference between the LCP fund and the Statutory Program. The Commission finds the fund could be used for farmworker housing under the currently certified LCP.

The LCP amendment, if approved as proposed by the City, would change this use from a lower priority use. This would mean this use could receive sufficient funding to support agricultural improvements resulting in continuation and long-term preservation of agriculture which is an appropriate use of the monies. However, the Commission would interpret the revision to mean that the portion of the fund spent on this use would be substantially less than the amount spent on the three other categories related to resource protection, lagoon nature centers, and beach restoration and access which are priorities under the Coastal Act. In addition, the Commission finds that maintenance, which could be interpreted as simply farming the land until it is removed from production, is not an appropriate use of the fund, because the mitigation fees are meant for activities or improvements that result in continuation of agricultural production on a long-term basis as an alternative to conversion to urban use. Use of a portion of the funds for farmworker housing, or other legitimate incentives for continued agricultural use on lands with an expectation for prolonged agricultural production rather than urban development, is acceptable and consistent with the original Commission action.

#### Prioritization and Administration

As stated above, the proposed amendment to Policy 2-1 would remove the priority requirement. The intent is not to establish priorities for fund use, but to promote equitable distribution amongst the allowable uses. In addition, the amendment proposes an advisory committee be formed to determine how the fees should be spent. The City found the advisory committee would “promote reasonable distribution amongst the allowable uses”. Additionally, the original top two priority uses have been completed, i.e., Batiquitos Lagoon restoration and development of the Buena Vista Lagoon Interpretive Center, therefore, making the existing priority language outdated. Those references would be replaced with language that would clarify that the fees must be spent on furthering the coastal and lagoon environment; purchase, improvement or maintenance of agriculture in the coastal zone; restoration and maintenance of beaches for public use (including vertical and lateral beach access improvements, trails, roadways and parking) and improvements to existing or proposed lagoon nature centers.



With the priority requirement deleted, these uses would all have equal standing to receive funds as determined by the advisory committee. This would give decision makers greater flexibility in determining use of the funds. Because the proposed uses are generally consistent with and only clarify those uses previously approved in the Statutory Program and Policy 2-1, the Commission concurs that the intent of the amendment is consistent with past actions to protect natural resources. Removing the priority requirement will make it easier for any and all uses to be funded in a timely manner.

However, with the proposed change to allow the City to administer the LCP fund and with the Conservancy continuing administration of the Statutory Fund, it is appropriate for the Conservancy to have representation on the advisory committee for continuity and to assure equitable distribution of the funds to all coastal resources in need of restoration. This requirement is acceptable to the City and the Conservancy staff.

In summary, as proposed, the changes to the allowable use of the agricultural mitigation fees would allow some activities, such as maintenance, roadways and parking, to be funded by the program. The Commission finds these uses are not appropriate mitigation for the impacts of development on the natural resources in Carlsbad and would not result in restoration and long-term protection of those resources. In addition, while it is acceptable for the City to administer the fund rather than the State Coastal Conservancy, it is appropriate for the Conservancy to continue to have input on how the funds are utilized due to its historic presence in the program and the fact it will continue to administer the Statutory Program. Therefore, as proposed, the amendment must be denied and modified as suggested in the following findings.

#### **PART V. FINDINGS FOR APPROVAL OF THE LAND USE PLAN, IF MODIFIED**

As noted in the above findings for denial of the LUP amendment, the Commission finds that the majority of the proposed revisions to Mello II Policy 2-1 can be approved as submitted. The proposed revisions would be consistent with the original objectives of restoring natural resources, agriculture and public access opportunities as funded by properties that convert from agricultural to urban uses. The City's proposed revisions eliminate the current prioritization of uses for the fund, revise the list of acceptable fund uses (the old list is outdated), designate the City as the administrator of the fund, add an advisory committee that would follow Council approved guidelines to ensure equitable distribution of funds and stakeholder participation, delete references to Batiquitos Lagoon as the only lagoon to be restored and delete references to the Buena Vista Lagoon Interpretive Center as the only center to be developed. As noted for the most part the Commission finds the proposed revisions are acceptable.

However, suggested modifications are necessary to address the proposed uses that are not consistent with the original intent of the certified LCP mitigation program or the legislative intent behind Section 30171.5, which is to restore natural resources and

beaches, improve and develop interpretive centers and encourage continued agricultural production, where feasible.

Specifically, the Commission finds transfer of the fund to be administered by the City is acceptable provided the advisory committee, which decides how the funds should be spent, includes representation from the State Coastal Conservancy (SCC) to ensure a statewide perspective will be represented when considering fee requests. The SCC currently administers the statutory fund and it administers similar funds throughout the State of California. As such, it has developed a working knowledge and considerable experience in this area that would mutually benefit the furthering of state and local goals to protect coastal resources.

As noted, Policy 2-1 identifies that the restoration of natural resources (restoration of Batiquitos Lagoon) is the highest priority use for mitigation fees. Similarly, the Statutory Program identifies restoration of natural resources in Batiquitos Lagoon as the highest priority use for mitigation fees, with 50% earmarked for that purpose. In keeping with the emphasis on the protection of natural resources in Carlsbad, the Commission finds removal of Batiquitos Lagoon and expansion of expenditure for restoration related activities in other lagoons is acceptable; however, the proposed revisions to Policy 2-1 do not go far enough in ensuring that natural resources will be protected to the fullest. While the proposed language identifies that fee funding extends to “restoration of the coastal and lagoon environment including acquisition, maintenance, management ...” the Commission finds “including but not limited to” must be added to ensure that any appropriate use not mentioned will not be rejected simply because it does not fit into one of the proposed categories. In addition, maintenance is not an acceptable use of funds meant to achieve restoration of resources and should be deleted from the proposed list.

Further, the amendment proposes maintenance of beaches as an acceptable use for mitigation fee funding. The Commission disagrees. Beach maintenance is not restoration of a natural resource, only the maintenance of same. The Commission finds the mitigation fees should only be spent for restoration of natural resources and not for uses otherwise provided for in other funding sources. In addition, and for similar reasons, parking and roadways are not acceptable uses for program funding.

The amendment proposes purchase, improvement and/or maintenance of agricultural lands for continued agricultural production, research activities or ancillary uses necessary for the continued production of agriculture. Again, the Commission cannot support maintenance of agricultural lands as being consistent with the Commission’s intent to preserve natural resources and encourage preservation of agricultural lands. Maintenance of ag lands could be interpreted as farming the land and does not address long-term preservation of agriculture. Only as modified can the Commission find the proposed land use plan amendment is consistent with the Coastal Act.

**PART VI. FINDINGS FOR REJECTION OF THE CITY OF CARLSBAD  
IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

**A. AMENDMENT DESCRIPTION.**

Section 21.202 of the certified zoning ordinance (Coastal Agriculture Overlay Zone) identifies the regulations for development of coastal agricultural land. Section 21.202.060 D, Agricultural Conversion Mitigation Fee, is proposed for amendment. The proposed revisions mirror the proposed changes to Policy 2-1 of the Mello II LUP, which was addressed in the preceding section of this report.

**B. SPECIFIC FINDINGS FOR REJECTION**

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

a) Purpose and Intent of the Ordinance. The coastal agriculture overlay (CA) zone is established to implement Sections 30170 (f), 30171(b), 30241, 30242 and 30250 of the Coastal Act and the certified local coastal program land use plan. This overlay zone recognizes agriculture as a priority use under the Coastal Act and protects that use by establishing mechanisms to assure the continued and renewed agricultural use of agricultural lands. The local coastal program recognizes that long-term agriculture may not be feasible and establishes agriculture as an interim use. Therefore, this zone allows urban development of such lands if specific findings are made or mitigation measures are undertaken.

b) Major Provisions of the Ordinance. Coastal agricultural land may be converted from agricultural use and developed for urban use. Where a property owner has agreed to pay an agricultural conversion mitigation fee pursuant to Section 21.202.060, then the city council, prior to approval of a master plan or planned development permit, must find that:

1. The master plan or planned development permit is consistent with the certified local coastal program.
2. Conversion would be compatible with continued agriculture on adjacent agricultural lands.
3. The property owner has executed an agreement to pay the fee and the agreement has been approved by the city council.

The amount of the fee shall be determined by the city council at the time it considers a coastal development permit for urban development of the property. The fee shall not be less than five thousand dollars nor more than ten thousand dollars per net converted acre of agricultural land. The fees shall be paid prior to the issuance of building permits for the project.

c) Adequacy of the Ordinance to Implement the Certified LUP Segments.

As noted, allowable uses for the Agricultural Mitigation Fee Program are contained within Policy 2-1, Conservation of Agricultural Lands, of the certified Mello II segment. Currently, the uses are categorized in priority order. The priority requirement would be

replaced by an advisory committee, which would be established by separate Council action. The committee would be charged with the equitable distribution of mitigation fees between the four categories of uses: coastal and lagoon restoration of natural resources, purchase and/or maintenance of agricultural lands, restoration of beaches and improvements to existing or proposed lagoon nature centers.

As noted in the preceding findings for denial of the land use plan amendment, the Commission finds that the amendment cannot be approved as submitted. Since the amendment to the implementation plan mirrors that of the amendment to the LUP, the Commission finds that the implementation plan amendment must be denied for the same reasons.

**PART VII. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED**

Similar to the above findings for denial of the LUP amendment, the Commission finds that the majority of the proposed revisions to Section 21.202.060D of the implementation program can be approved as submitted. The proposed revisions would be consistent with original objectives of natural resource preservation, mitigating the impacts of urban development on agricultural and natural resources and restoring public access opportunities as funded by properties that convert from agricultural to urban uses. The proposed revisions eliminate the current prioritization of uses for the fund, revise the list of acceptable fund uses (the old list is outdated), designate the City as the administrator of the fund, add an advisory committee that would follow Council approved guidelines to ensure equitable distribution of funds and stakeholder participation and delete references to Batiquitos Lagoon as the only lagoon to be restored and delete references to the Buena Vista Lagoon Interpretive Center as the only center to be developed. However, for the same reasons as identified in the LUP findings for approval if modified, the Commission finds that the suggested modifications identified above are necessary to find the proposed revisions to the implementation program consistent with Policy 2-1 of the certified Mello II LUP.

**PART VIII. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required, in approving an LCP submittal, or, as in this case, a LUP and IP amendment submittal, to find that the approval of the proposed LUP

and IP, as amended, do conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment (14 C.C.R. §§ 13542(a), 13540(f), and 13555(b)). In this particular case, with the suggested modifications above, the amendment can be approved, as there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact on the environment. Therefore, the Commission finds the subject LCP land use and implementation plans, as amended, and with the suggested modifications listed above, conform with CEQA provisions.